IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1197 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAYANTIBHAI JAVABHAI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 1197 of 1997
MS BANNA S DUTTA for Appellant
MR SUDHANSU S PATEL, A.P.P., for Respondent

CORAM : HON'BLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 25/08/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE J.M.PANCHAL)

Instant appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973 is directed against judgment dated August 27, 1996, rendered by the learned Additional Sessions Judge, Ahmedabad city, in Sessions Case No.96 of 1995, by which the appellant is convicted of the offences punishable under Sections 302, 307 as well as Section 304 of the Indian Penal Code and sentenced to suffer R.I. for life and fine of Rs.2000/-, in default, R.I. for six months for commission of offence punishable under Section 302 I.P.C. and R.I. for five years for commission of offence punishable under Section 307 I.P.C. as well as R.I. for seven years for commission of offence punishable under Section 304 I.P.C. It may be stated that the learned Additional Sessions Judge has directed that substantive sentences imposed on the appellant shall run concurrently.

2. Shantaben Hirabhai, who is complainant in the case, is resident of village Shihi, Taluka : Sidhpur, District:Mehsana. Name of her husband was Hirabhai Govabhai. The record shows that Hirabhai Govabhai expired before the incident. During the subsistence of her marriage with deceased Hirabhai, Shantaben had given birth to four children, out of whom two were sons and two were daughters. Name of the eldest daughter was Dinaben, who was married to the appellant 20 years before the date of the incident which is December 8, 1994. During the subsistence of her marriage with the appellant, Dinaben had given birth to five children, out of whom two were sons and three were daughters. Name of one of her sons is Vinod, whereas name of the other is Naresh. Dinaben was staying with the appellant at Jay-Chamunda Chawl, Ramapir Tekra, Nava Vadaj, Naranpura, Ahmedabad. The appellant, at the time of the incident, was doing business of selling fruits at Manek Chowk.

It may be stated that second daughter of Shantaben i.e. Dahiben was given in marriage to Somabhai Khemabhai of village Hansapur, Taluka : Patan, District : Mehsana. Ten days prior to the date of incident, Dahiben and her husband Somabhai had come to the house of Shantaben situated in village Shihi because Somabhai was ill. During the stay of Dahiben with her husband at the house of her mother, it was learnt that Ramjibhai, brother of Shantaben Hirabhai, residing at Ahmedabad, was also ill. Therefore, on the day prior to the date of incident, Shantaben, in the company of her daughter Dahiben and her son-in-law Somabhai, had come to

Ahmedabad to inquire about the health of her brother Ramjibhai. During the night time all the three had stayed at the house of Ramjibhai. At about 4.00 P.M. on the day of incident, Shantaben, in the company of her daughter Dahiben and son-in-law Somabhai, had gone to the house of Dinaben, who was staying in Jay-Chamunda Chawl, Ramapir Tekra, Nava Vadaj, Ahmedabad. At that time, Dinaben and her children were present in the house, but the appellant was not present, as he had gone out of house for the purpose of doing business. Dinaben had prepared dinner for all and all were waiting for the appellant to return home after doing business. At about 9.00 P.M. Dinaben was sitting on the floor near the place of cooking and just near her, Dahiben i.e. her sister was also sitting; whereas Somabhai was chit-chatting with Vinod i.e. son of the appellant, on the cot lying in the room and Shantaben was sitting outside the room in the osari. The evidence on record shows that the appellant had bad habit of consuming liquor and was not giving any amount to his wife Dinaben to enable her to meet household expenses. The appellant had come to his house at about 9.00 P.M. and ignoring the presence of his mother-in-law, sister-in-law and brother-in-law, had started abusing his wife Dinaben in filthiest language. Dinaben had tried to pacify the appellant and requested him to behave nicely, as her mother, her sister and her brother-in-law were present in the house. However, the appellant, who had consumed liquor, was in no mood to listen to the entreaties of his wife Dinaben. After sometime, the appellant had demanded tea. Therefore, Dinaben had lighted a stove which was operating through wicks. Before she could place utensil on stove for preparing tea, the appellant, who was in an inebriated state, picked up a Can filled with kerosene and poured kerosene over Dinaben as well as Dahiben, who was sitting on the floor quite near Dinaben. The appellant thereafter kicked the lighted stove, as a result of which polyester Sari, which was put on by the deceased, caught fire. The deceased was engulfed in fire within no time. Dahiben, who was sitting quite near the deceased on the floor, also sustained serious burn injuries. Somabhai i.e. husband of Dahiben, and Vinod, son of the deceased, who were sitting on the cot, had made an attempt to extinguish the fire and in that process, Vinod had received serious burn injuries. Immediately thereafter, the appellant had gone away from his house after bolting the door of the house from outside. The fire had spread in the room rapidly endangering lives of those who were in the room and, therefore, shouts for help were raised by all. One Jashvantrai Ishwarbhai Shrimali, who was residing in the

house adjoining to that of the appellant, had immediately come to the rescue of deceased Dinaben and poured water on her from an earthen-pot, but as fire had engulfed the whole room, Jashvantrai had also received serious burn injuries on his chest etc. Meanwhile, several persons of the locality had collected near the place of incident and put out the fire. Bhikhabhai Maganbhai Shrimali, uncle of Jashvantrai Ishwarbhai, had called Ambulance on telephone. Because of the message sent by Bhikhabhai, two vehicles were sent at the place of incident and those who had received burn injuries, were removed to V.S.Hospital for treatment. At the V.S.Hospital, Dr.Niranjan Gupta, who was C.M.O. of the Hospital, had treated the injured. Dr.Gupta had informed Vishnuprasad M.Pandya, who was then Head Constable on duty at V.S.Hospital, that five persons, namely, (i) Somabhai Khemabhai, (ii) Jashvantrai Ishwarbhai, (iii) Vinod Jayantilal, (iv) Dinaben Jayantilal, and (v) Dahiben Somabhai, had received burn injuries because of the act of Jayantibhai Javabhai i.e. the appellant in setting on fire his hut, and were admitted in the hospital for treatment. The Head Constable had noted down the information conveyed to him by Dr.Gupta in Vardhi-book and informed P.S.O. of Naranpura Police Station accordingly. P.S.O. of Naranpura Police Station had handed over extract of Vardhi to Mr.K.C.Patel, who was then P.S.I. of the Police Station. Thereupon, Mr.K.C.Patel had gone to V.S.Hospital and recorded first information report as narrated by Shantaben. He had prepared a yadi to be sent to the Executive Magistrate requesting him to record dying declarations of the injured and obtained an endorsement on yadi itself from the Doctor to the effect that injured were conscious. The said yadi was thereafter despatched to Executive Magistrate. On receipt of Yadi, Mr.Jagdishbhai S.Parmar, who was then Executive Magistrate, had come to the hospital for recording dying declarations of the injured. It was found by Mr.Parmar that Dinaben had sustained serious injuries and was rendered unconscious. Therefore, her dying declaration was not recorded. However, dying declarations of Jashvantrai and Vinodbhai Jayantilal were recorded. Mr.G.H.Patel, who was then P.I. of Naranpura Police Station, had taken over investigation of the case from P.S.I. Mr.K.C.Patel. He had drawn panchnama of place of incident and visited the hospital. P.I. Mr.G.H.Patel had recorded police statements of Jashvantrai and Vinod. During the course of treatment, Dinaben succumbed to her injuries on December 9, 1994; whereas injured Jashvantrai and injured Vinod succumbed to their injuries on December 14, 1994. P.I.Mr.Patel had made necessary arrangements for sending

three dead bodies for postmortem examination. During the course of investigation, the appellant was arrested on December 13, 1994. The investigating officer had also recorded statements of those persons who were found to be conversant with the facts of the case. The incriminating articles such as clothes of the deceased, clothes of the injured, clothes of the appellant etc. seized during the course of investigation were sent to Forensic Science Laboratory ["F.S.L" for short] for analysis. On completion of investigation, the appellant was chargesheeted in the Court of learned Metropolitan Magistrate, Ahmedabad of the offences punishable under Sections 302 & 307 of the Indian Penal Code. As the offences punishable under Section 302 & 307 I.P.C. are exclusively triable by a Court of Sessions, the case against the appellant was committed to City Sessions Court, Ahmedabad for trial, where it was numbered as Sessions Case No.96 of 1995.

3. The learned Additional Sessions Judge, Ahmedabad city to whom the case was made over for trial, had framed charge against the appellant at Exh.2 of the offences punishable under Sections 302 & 307 I.P.C. The charge was read over and explained to the appellant, who had pleaded not guilty to the same and claimed to be tried. The prosecution had, therefore, examined (1) Dr.Dilip Manubhai Desai as PW.1 at Exh.6, (2) Jagdish Sunderlal Parmar as PW.2 at Exh.14, (3) Bipinchandra Jethalal Chauhan as PW.3 at Exh.18, (4) Shantaben Hirabhai Govabhai as PW.4 at Exh.20, (5) Somabhai Khemabhai as PW.5 at Exh.22, (6) Madhusudan Manilal as PW.6 at Exh.23, (7) Dahiben Somabhai as PW.7 at Exh.28, (8) Vishnuprasad Manilal Pandya as PW.8 at Exh.29, (9) Bhikhabhai Maganbhai Shrimali as PW.9 at Exh.31, (10) Kiritbhai Chhotalal Patel as PW.10 at Exh.32, (11) Dr.Jayesh Vaghjibhai Limbachiya as PW.11 at Exh.36, (12) Govindbhai Hirabhai Patel as PW.12 at Exh.42, and (13) Kiritbhai Amthabhai Shrimali as PW.13 at Exh.54, to prove its case against the appellant. The prosecution had also produced documentary evidence such as postmortem notes of deceased Jashvantrai Ishwarbhai at Exh.7, postmortem notes of deceased Dinaben Jayantilal at Exh.8, postmortem notes of Vinod Jayantilal at Exh.9, dying declaration of Jashvantrai at Exh.15, yadi received by Executive Magistrate for recording dying declarations of the injured at Exh.16, dying declaration of deceased Vinod Jayantilal Parmar at Exh.17, panchnama of place of occurrence at Exh.19, First Information Report lodged by Shantaben at Exh.21, arrest panchnama of the appellant at Exh.24, inquest panchnama relating to deceased Jashvantrai at Exh.25, inquest panchnama of Dinaben at

Exh.26, inquest panchnama of Vinod at Exh.27, Vardhi sent by police constable Vishnuprasad to P.S.O. of Naranpura Police Station at Exh.30, intimation given to competent officer to make report under Section 157 of the Code at Exh.33, injury certificate of witness Somabhai Khemabhai at Exh.37, certificate indicating injuries sustained by witness Dahiben at Exh.38, medical case papers of deceased Dinaben at Exh.39, medical case papers of deceased Jashvantrai at Exh.40, medical case papers of deceased Vinod at Exh.41, statement of Jashvantrai Shrimali recorded by P.I. Mr.Patel at Exh.43, statement of deceased Vinod Jayantilal recorded by P.I. Mr.Patel at Exh.44, map of place of incident at Exh.45, report of analysis forwarded by F.S.L. at Exh.47, entry made in the diary maintained at the police station pursuant to the information given by Head Constable Vishnuprasad at Exh.49, panchnama of seizure of clothes of the injured and the deceased at Exh.55 etc. in support of its case against the appellant.

4. After recording of evidence of prosecution witnesses was over, the learned Judge had explained to the appellant the circumstances appearing against him in the evidence of prosecution witnesses and recorded his further statement as required by Section 313 of the Code of Criminal Procedure, 1973. In his further statement, case of the appellant was that his mother-in-law had filed a false complaint against him and that he was not present at the time of incident. However, neither he had examined himself on oath nor any witness in support of the defence which was pleaded by him in his further statement.

5. On evaluation of evidence adduced by the prosecution, the learned Judge held that it was proved by the prosecution beyond reasonable doubt that deceased Dinaben had died a homicidal death. According to the learned Judge, the evidence of witnesses (i) Shantaben Hirabhai Govabhai, PW.4, recorded at Exh.20, (ii)Somabhai Khemabhai, PW.5, recorded at Exh.22,and (iii) Dahiben Somabhai, PW.7, recorded at Exh.28 as well as dying declarations of deceased Jashvantrai and deceased Vinod Jayantilal were trustworthy, cogent and consistent which established beyond pale of doubt that the appellant had murdered his wife by pouring kerosene over her and attempted to commit murder of Somabhai Khemabhai and Dahiben Somabhai. In view of this conclusion, it was deduced by the learned Judge that the appellant was liable to be convicted of the offences punishable under Sections 302 & 307 I.P.C. It was further noticed by the learned Judge that deceased Jashvantrai and deceased

Vinod Jayantilal had received burn injuries while attempting to save deceased Dinaben Jayantilal and ultimately died, which was the result of the act done by the appellant with the knowledge that it was likely to cause death of the deceased or to cause such bodily injury as was likely to cause death of the deceased and, therefore, the appellant was also liable to be convicted of the offences punishable under Section 304 Part-II I.P.C. In view of abovereferredto conclusions, the learned Judge has convicted the appellant of the offences punishable under Sections 302, 307 & 304 I.P.C. and imposed sentences referredto earlier by judgment dated August 27, 1996, giving rise to instant appeal.

6. Ms.Banna Dutta, learned counsel of the appellant, contended that the prosecution has failed to prove the motive which prompted the appellant to commit crime in question and, therefore, the judgment impugned in the appeal should be set aside. According to the learned counsel of the appellant, Vardhi produced by the prosecution at Exh.16 indicates that the appellant had burnt roof of his house, as a result of which several persons had received burn injuries and, therefore, the case of the prosecution that the appellant had poured kerosene over his deceased wife and sister-in-law and kicked lighted stove, as a result of which, burn injuries were received by the deceased as well as by her sister and her brother-in-law should have been disbelieved by the Court. It was argued that Exh.16 should have been treated as First Information Report because it was recorded prior in point of time than the complaint of Shantaben, and as Exh.16 completely exonerates the appellant, the appeal should be allowed. What was maintained before the Court was that Exh.16 does not indicate that the appellant had caused burn injuries to the deceased and others and, therefore, interested version of the eye witnesses should have been disbelieved by the learned Judge. According to the learned counsel of the appellant, the contents of panchnama of place of occurrence produced at Exh.19 show that the police had recovered an open empty wick stove on which there were no black-spots which would have been found if it had been filled up with kerosene and, therefore, the case of the prosecution that the appellant had poured kerosene over the deceased and others who, in turn, had received burn injuries because fire had taken place due to lighted stove, should have been disbelieved. It was argued that the case of the prosecution was that deceased Dinaben was about to prepare tea when the incident had taken place, but no utensil was recovered indicating that any preparation was made by the deceased for tea and,

therefore, the prosecution case should have been disbelieved by the learned Judge. The grievance made by the learned counsel of the appellant was that investigation carried out in the case was not honest and, therefore, benefit of doubt should have been given to the appellant. It was urged that prior to recording of dying declarations, opinion of the medical officer to the effect that both the deceased were conscious and in a fit state of mind to make statement was not obtained and, therefore, those dying declarations should not have been taken into consideration while deciding the question of guilt or otherwise of the appellant. It was emphasised that four dying declarations, which are on record of the case, were not admissible under Section 32 of the Indian Evidence Act because the statement in a dying declaration of one dead person in regard to the death of another is not a relevant fact with respect to the question about the death of the latter and, therefore, those dying declarations should be discarded while deciding the question whether the appellant had caused death of his wife Dinaben or not. It was argued that once those dying declarations are kept out of consideration for deciding the question whether the appellant had caused murder of his wife or not, the Court is left with evidence of interested witnesses, which is neither credible nor cogent and, therefore, the appeal should be accepted.

7. Mr.Sudhansu S.Patel, learned counsel of the State Government, contended that Exh.16 is the yadi forwarded by police officer to Executive Magistrate requesting him to record dying declarations of injured, but Vardhi i.e. information conveyed by Head Constable Vishnuprasad pursuant to instructions of C.M.O. Dr.Niranjan Gupta of Sheth Vadilal Hospital is produced on record at Exh.30 and, therefore, the arguments advanced by the learned counsel of the appellant based on Exh.16 should be treated as having been advanced with reference to Exh.30. It was argued that C.M.O. Dr.Niranjan Gupta of Sheth Vadilal Hospital is not examined as a witness in the case and, therefore, the information conveyed by Head Constable Vishnuprasad, as reflected in Exh.30, will have to be regarded as hearsay evidence, as a result of which the learned Judge was justified in not treating the same as F.I.R. and treating the complaint of witness Shantaben as F.I.R. in the case. It was argued by the learned A.P.P. that the presence of Shantaben as well as that of injured witness Somabhai Khemabhai and injured witness Dahiben Somabhai at the time and place of incident is hardly in dispute and, therefore, their evidence cannot be brushed aside on the ground that they are interested witnesses as is contended by the learned

counsel of the appellant. According to the learned A.P.P., the record does not show that Somabhai Khemabhai or for that reason Dahiben Somabhai or complainant Shantaben, were on inimical terms with the appellant and as there was no possibility of their screening the real culprit, as they were close relatives of deceased Dinaben, the learned Judge was justified in accepting their evidence, more particularly when no major contradictions and/or omissions with reference to their earlier police statements were brought on record. It was argued that one of the tests to determine whether dying declaration produced is reliable or not is to find out whether the person who had recorded the same was satisfied that he was recording statement of a person, who was conscious and in a fit state of mind, and as this test stands satisfied by reliable testimony of Executive Magistrate Mr.J.S.Parmar recorded at Exh.14 as well as that of P.I. Mr.G.H.Patel recorded at Exh.42, absence of certificate from medical officer to the effect that makers of dying declarations were conscious and in a fit state of mind to make statements, is of no consequence. While dealing with the plea advanced by the learned counsel of the appellant that the statement in the dying declarations of dead persons in regard to the death of the other deceased is not a relevant fact and not admissible in evidence with respect to offence of murder of deceased Dinaben, it was argued that the question whether the statement of one dying person can be relevant with respect to the death of another depends upon (a) whether it was made in continuum of a narration describing the final occurrence concerning the declarant; (b) whether it is directly concerned with an event which took place in the presence, sight or hearing of the declarant, (c) whether that event has some proximate relation to the actual final occurrence, and (d) whether the declaration would become unintelligible or distorted if the version of that event is bottled out from the declaration and, therefore, having regard to these relevant factors, it is not correct to argue that the statement in dying declarations of the deceased in regard to death of deceased Dinaben is not a relevant fact and not admissible under Section 32 of the Evidence Act. The learned counsel of the State Government emphasised that reliable testimony of Shantaben and that of Somabhai as well as that of Dahiben establishes that the appellant had poured kerosene over deceased Dinaben and Dahiben and kicked the lighted stove, as a result of which, three persons had received injuries, out of whom one had died and two persons, who had attempted to save the deceased, had also died and, therefore, conviction of the appellant under Sections 302, 307 & 304 Part-II I.P.C. cannot be

regarded as illegal or erroneous. It was pointed out to the Court that over and above the intention of the appellant to cause death of his deceased wife Dinaben, it was also his intention to cause murder of Dahiben, who was sister of the deceased, and Somabhai, who was brother-in-law of the deceased and, therefore, conviction of the appellant under Section 307 I.P.C., being well-founded, should be upheld by this Court. The learned counsel contended that the act of the appellant of pouring kerosene over the deceased and Dahiben as well as Somabhai and setting them on fire by kicking stove was such that the fire had engulfed the whole room and, therefore, it must be held by the Court that the act was done with knowledge by the appellant that it was likely to cause death or to cause such bodily injury as was likely to cause death of the persons who were to make attempt to save the persons who were set on fire and, therefore, conviction under Section 304 Part-II I.P.C. also should not be regarded as illegal. The learned counsel of the State Government emphasised that cogent and convincing reasons have been assigned by the learned Judge for convicting the appellant of the offences punishable under Sections 302, 307 & 304 Part-II I.P.C. and as the learned counsel of the appellant has failed to dislodge them, the appeal should be dismissed.

8. This Court has undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case. The fact that the deceased had died a homicidal death is not in dispute. It is not argued before this Court that the deceased had received burn injuries accidentally nor it is argued before this Court that the deceased had received burn injuries as she had committed suicide. The reliable testimony of Shantaben, who is the mother of deceased Dinaben as well as that of injured Somabhai Khemabhai, who is brother-in-law of deceased Dinaben as well as that of Dahiben, who is real sister of deceased Dinaben, would show that the appellant had poured kerosene over her from a Can and as there was lighted a stove quite nearby the deceased, clothes put on by the deceased had caught fire and ultimately the deceased was engulfed in fire. The burn injuries which were sustained by the deceased have been noted in the inquest panchnama produced on record of the case at Exh.26. The testimony of Dr.Dilip M.Desai, who had performed autopsy on dead body of deceased Dinaben, shows that the deceased had received burn injuries. Those injuries have been enumerated by him in his substantive evidence before the Court and also mentioned in Column-17 of postmortem notes

of the deceased produced on record of the case at Exh.8. As per the Medical Officer, the cause of death of the deceased was shock as a result of burns. No attempt was made by the defence to establish that death of the deceased was natural or accidental or suicidal. The learned Judge of the trial Court has given cogent reasons for coming to the conclusion that it was proved by the prosecution, beyond reasonable doubt, that the deceased had died a homicidal death. This Court concurs with those reasons and holds that it is proved by the prosecution, beyond pale of doubt, that the deceased had died a homicidal death.

9. In order to prove charges levelled against the appellant, the prosecution has heavily relied upon testimony of three witnesses. They are (1) Shantaben Hirabhai Govabhai; (2) Somabhai Khemabhai; and (3) Dahiben Somabhai. Shantaben in her testimony which is recorded at Exh.20 has stated that she was residing in village Shihi of Taluka Sidhpur, District Mehsana, and that her husband had expired. According to her, she had four children, out of whom two were sons and two were daughters. It was mentioned by the witness that Dinaben, who was one of her daughters, was married to the appellant twenty years before the date of incident and was residing in Jay-Chamunda Chawl, Ramapir Tekra, Nava Vadaj, Naranpura, Ahmedabad with the appellant. According to her, her another daughter Dahiben was married to Somabhai Khemabhai of village Hansapur. It was mentioned by the witness before the Court that ten days prior to the date of incident, her daughter Dahiben, with her husband Somabhai, had come to her house situated in village Shihi because Somabhai was ill. According to her, after a week, it was learnt that her brother Ramjibhai, who was residing at Ahmedabad, was ill and, therefore, she, in the company of her daughter Dahiben and son-in-law Somabhai, had come to Ahmedabad to make inquiry about the health of Ramjibhai. What was stated by the witness before the Court was that they had come to Ahmedabad prior to the date of incident and stayed overnight at the house of Ramjibhai and gone to the house of the appellant at about 4.00 p.m. on the day of the incident. It was mentioned by the witness that when she had gone with her daughter and son-in-law to the house of the appellant, her daughter Dina and children were present, but the appellant was not present as he had gone out for the purpose of doing his business. It was mentioned by the witness that at about 9.00 p.m., the appellant had returned home and started hurling filthy abuses at her daughter Dinaben. It was stated by the witness that the appellant was in an inebriated state and

refused to listen to the entreaties of his deceased wife, not to utter filthy abuses and quarrel in presence of guests. It was also mentioned that the appellant had asked deceased Dinaben to prepare a cup of tea for him and, therefore, the deceased had made preparation for tea. According to her, a wick-stove was lighted by her daughter Dinaben for the purpose of preparing tea, but before the utensil could be placed on stove, the appellant had poured kerosene over her daughter Dinaben and another daughter Dahiben, who was just sitting near the deceased on floor from a Can. What was mentioned by the witness before the Court was that flames of the stove had touched clothes of Dinaben as a result of which, Dinaben had received burn injuries and so also, her another daughter Dahiben had also received burn injuries. According to this witness, the appellant had run away after bolting the door of house from outside. It was also mentioned by the witness that at the time when the appellant had poured kerosene over deceased Dinaben, her son-in-law, i.e. Somabhai, was in the room and was chitchatting with Vinod, who is son of the appellant, on a cot, and that his son-in-law Somabhai had also received burn injuries because within no time, the fire had spread in the whole room. It was also claimed by the witness that Jashvantri Ishwarbhai, who was residing in a house just near the house of the appellant, had rushed and attempted to extinguish fire on deceased Dinaben and similar attempt was made by Vinod, who was son of the deceased, but both of them had received severe burn injuries. It was her case before the Court that somebody had called a van from hospital and, therefore, she had taken all the injured to V.S.Hospital for treatment. It was also mentioned by her that the appellant, who had bad habit of consuming liquor, was not giving sufficient amount to her deceased daughter Dinaben to meet with household expenses, as a result of which quarrels were taking place between the appellant and deceased Dinaben. It was also mentioned by the witness that she had lodged complaint and that in the incident Dinaben as well as Jashvantrai Ishwarbhai and her grand son Vinod Jayantilal had died.

In her cross-examaintion, it was stated by her that before the arrival of the appellant in the house, the deceased had prepared food for all on the stove. According to her, size of the room in which the incident had taken place was 10 x 10 ft. It was also mentioned by this witness in her cross examination that she was often visiting the house of the appellant on social occasions. The suggestion made by the defence that the appellant had not uttered filthy abuses was emphatically denied by the

witness. It was also denied by the witness that the appellant had not consumed liquor. In cross examination, it was again maintained by the witness that the appellant had started hurling choicest filthy abuses at the deceased and the deceased had made necessary preparation for tea because she was asked to serve a cup of tea by the appellant. In cross examination, it was also mentioned by the witness that the appellant had continued to abuse the deceased in filthy language for about an hour and that too in loud voice and had refused to see reason though he was persuaded by his deceased wife and others to cooldown It was asserted by her that it was mentioned by her in her complaint that the appellant had returned home after consuming liquor. The suggestion made by the defence that deceased Dinaben had not made preparation for tea was emphatically denied by her. It was also emphatically denied by her that the appellant had not poured kerosene over Dinaben. It was admitted by her that she had not stated in her complaint that the appellant had run away after bolting door of the house from outside and it was maintained that the fact that the appellant had run away was stated by her in her complaint. In cross examination, it was stated by the witness that at the time when the appellant had poured kerosene over deceased Dinaben, her another daughter Dahiben was sitting quite near her. The suggestion made by the defence that kerosene had not sprinkled over deceased Vinod and injured Somabhai when it was poured over deceased Dinaben, was emphatically denied by her. According to her, after Jashvantrai Ishwarbhai had come to the help of the deceased, several persons of the locality had collected near the house of the appellant. It was maintained by this witness in her cross examination that she had informed the doctor on duty that the appellant had set his hut on fire. According to her, her daughter was done to death and, therefore, there was no reason for her to make a false statement before the Court. The suggestion made by the defence that it was not true that the appellant was not giving amount to deceased Dinaben to enable her to meet household expenses, was emphatically denied by her. The suggestion made by the defence that the deceased had received burn injuries accidentally was also emphatically denied by her.

This is all what transpires from the testimony of eye witness Shantaben.

On reassessment of her evidence, this Court finds that her testimony does not indicate that she was on inimical terms with the appellant. In fact, though the

appellant was abusing her daughter in filthy language, she had not scolded the appellant nor condemned the behaviour of the appellant towards her daughter. She was a helpless passive spectator to the incident, whose daughter was married to the appellant and who had given birth to five children of the appellant. On reading her testimony, it becomes at once clear that she has narrated the incident as it had happened. There are no major contradictions and/or omissions in her evidence. No other infirmities evident from her testimony could be brought to the notice of the Court by the learned counsel of the appellant. It is well to remember that the deceased was daughter of this witness. This witness was fully aware about the consequences of her deposition before a Court to the effect that the appellant would be sentenced to life imprisonment if her testimony was believed by the Court. Her daughter had died in the incident and, therefore, she must have been aware of the fact that the children of her daughter would be rendered almost orphans. However, this witness, who is the mother of the deceased, could not have spared the real culprit. Under the circumstances, she has narrated the incident in a forthright manner which inspires confidence of the Court. As observed earlier, she is probably the nearest relative of the deceased and, therefore, would not allow the real culprit to go scot free, or implicate her own son-in-law falsely in such a serious case. A fair reading of testimony of this witness establishes that the appellant had poured kerosene over deceased Dinaben, who was his wife as well as Dahiben, who is his sister-in-law and caused death of the deceased and serious injuries to Dahiben. The testimony of this witness is of sterling quality and, therefore, conviction of the appellant of the offences punishable under Sections 302 & 307 I.P.C. can be sustained only on the basis of her evidence alone.

10. However, the prosecution has also examined injured Somabhai as PW.5 at Exh.22 to prove charges levelled against the appellant. His testimony would show that he is son-in-law of witness Shantaben Hirabhai and had come to Ahmedabad on December 7, 1994 alongwith his wife and mother-in-law at the house of Rama Becharji, who is maternal uncle of his wife and whose house is situated at Girdharnagar, Ahmedabad. According to this witness, they had stayed overnight at the house of Ramabhai and had gone at the house of his sister-in-law on the next day at about 5.00 P.M. It is stated by the witness that at that time his sister-in-law and her children were present and that her sister-in-law had prepared meals for all and all were chitchatting and waiting for the appellant to return. According to this witness, his

brother-in-law Jayantilal i.e. the appellant, had returned home at about 9.00 P.M. and was heavily drunk. It is claimed by the witness that the appellant had started hurling filthy abuses at the deceased and in spite of several attempts made by the deceased to cool down the appellant, the appellant had continued to abuse the deceased in filthy language. It is stated by the witness that his sister-in-law Dinaben was about to prepare tea and quite near her, his wife Dahiben was sitting on the floor; whereas he was sitting on a cot with his nephew Vinod. What is maintained by the witness is that the appellant had picked up a Can full of kerosene lying in the room and poured the same over his sister-in-law, part of which had also fallen on his wife because his wife was sitting quite near deceased Dinaben. According to this witness, as the stove was lighted, fire had taken place and engulfed all. According to this witness, the appellant had poured kerosene over the deceased saying that why she was not preparing tea speedily. It is also mentioned by the witness that he and Vinod had made an attempt to save the deceased and that the appellant, after bolting the door of the room from outside, had run away. According to this witness, his mother-in-law Shantaben, who was sitting in the osari, had raised shouts as a result of which people residing nearby had collected near the house of the appellant. It is stated by the witness that Jashvantrai, who was neighbour of the appellant, had tried to extinguish fire on the deceased and had received burn injuries. It is claimed by the witness before the Court that somebody had called an ambulance and, therefore, in the ambulance, the injured, including him, were removed to V.S.Hospital for treatment and that injured were accompanied by Shantaben. According to this witness, after the case was registered by the hospital authorities, he was treated for his burn injuries. It is also mentioned by the witness that police had interrogated him and that he had given answers to the questions put by the police. What is mentioned by the witness is that during night hours at about 3.00 O'clock Executive Magistrate had come and recorded his dying declaration as well as dying declaration of his nephew Vinod.

In cross-examination by the defence it is stated by the witness that he was not able to remember whether 100 to 200 houses were situated near the house of the appellant. It is stated by this witness in his cross-examination that he had never stayed overnight at the house of the appellant. According to him, house of Jashvantrai was situated on the left side of the house of

the appellant and he was not knowing as to whose house was situated on the right side of the house of the appellant. According to him, when they had gone to the house of deceased Dinaben at about 5.00 P.M., all were sitting in the room. After describing the articles kept in the room, it was mentioned by the witness that the appellant had started hurling abuses at the deceased as soon as he had entered his house and he had continued to abuse the deceased for a pretty long time in loud voice. It is explained by the witness in his cross-examination that the cot on which he was sitting with his nephew Vinod, was hardly at a distance of 5 ft. away from the place, where the deceased was making preparation for tea. It is also maintained by the witness in his cross-examination that the deceased was quite near to the lighted stove when kerosene was poured over her by the appellant. According to him, primus had overturned because the appellant had kicked the same, as a result of which, fire had taken place in the room and all were engulfed in fire. The suggestion made by the defence that the appellant had not returned home after consuming liquor was denied by him. It was also denied by him that the appellant had not poured kerosene over his wife. The suggestion made by the defence that the appellant was not hurling filthy abuses at his wife was emphatically denied by the witness. It was maintained by the witness during his cross-examination that it was stated by him in his police statement that the appellant had refused to cool down, though several attempts were made by the deceased. The suggestion made by the defence that the appellant had not run away after bolting door of the house from outside was also denied by him. The cross-examiner had put a suggestion to the witness that he was not conscious when his statement was recorded by the Executive Magistrate, but the said suggestion was also emphatically denied by him. According to him, he was made to lie down on a cot when he was treated at the hospital. The funny suggestion made by the defence that his mother-in-law had poured kerosene over the deceased was emphatically denied by the witness. It was also denied by the witness that the stove had burst as a result of which fire had taken place. It was also denied by the witness that he was falsely deposing before the Court at the instance of his mother-in-law. According to him, he had sustained burn injuries on both his legs.

The reassessment of testimony of witness Somabhai would indicate that he himself was injured in the incident. As he himself was injured in the incident, his presence at the time and place of incident can hardly be doubted. It was never suggested to this witness that he

was on inimical terms with the appellant. He had merely accompanied his wife and mother-in-law when his mother-in-law had come to Ahmedabad to inquire about the health of her brother. His evidence would show that he had never stayed overnight in the house of the appellant. As such, he was the brother-in-law of the appellant and had no enmity worth the name with him at all. His testimony would show that the appellant had consumed liquor and was abusing his wife in a filthy language. His evidence also establishes that all attempts were made by the deceased to pacify the appellant, but in vain, and the appellant had poured kerosene over the deceased and wife of this witness and kicked the lighted stove, as a result of which, all were engulfed in the ensuing fire. The witness himself had received burn injuries and was treated by Dr.Limbachiya of V.S.Hospital. The certificate indicating injuries sustained by him is produced by the prosecution at Exh.37. Thus, the testimony of this witness gets complete corroboration from the reliable testimony of Shantaben, who is the mother-in-law as well as medical evidence on record. No major contradictions and/or omissions could be brought on record by the defence with reference to earlier police statement of this witness. The witness has tendered evidence without making major improvements and/or embellishments. He has not tried to exaggerate the incident. In this incident, not only his sister-in-law had lost life, but he himself and his wife had also received injuries. Under the circumstances, there is no likelihood that he would spare the real culprit to go scot free and falsely involve the appellant, who is his brother-in-law, in such a serious and heinous crime. His testimony is trustworthy as well as cogent and, therefore, deserves acceptance by the Court. Once the testimony of witness Somabhai Khemabhai is accepted, there is no manner of doubt that it is proved by the prosecution, beyond pale of doubt, that the appellant had poured kerosene over the deceased and also over Dahiben and set them ablaze by kicking a lighted stove, as a result of which deceased Dinaben, who was the wife of the appellant, had lost life; whereas Dahiben, who is the wife of this witness Somabhai, had sustained injuries and Somabhai himself had also sustained injuries. Thus, commission of offences punishable under Sections 302 & 307 I.P.C. is made out against the appellant from the trustworthy testimony of witness Somabhai Khemabhai also.

11. The prosecution has also examined injured Dahiben Somabhai as PW.7 at Exh.28. She has stated in her testimony that incident in question had taken place in the house of the appellant, who was her brother-in-law.

According to her, name of her sister was Dinaben. It is mentioned by the witness that Dinaben was sitting on the floor near a lighted primus and that she herself was sitting quite near Dinaben. What is mentioned by this witness is that her brother-in-law i.e. the appellant had got-up and poured kerosene over both the sisters i.e. over herself and her sister Dinaben; whereas rest of the kerosene had spilled on the floor. According to her, as there was lighted stove, fire had taken place and all had started burning. It is mentioned by her that in the incident, she herself, her sister Dinaben, Vinod, who was son of her sister Dinaben, her husband Somabhai and one neighbour Jashvantrai had received burn injuries. According to her, she had received burn injuries on her chest and stomach and that all were shouting for help. According to her, Jashvantrai, residing in the adjoining house, had come and in an attempt to save them, had received burn injuries; whereas her brother-in-law i.e. the appellant had run away after setting them on fire. It is mentioned by her that thereafter ambulance was summoned and that all the injured were removed to hospital for treatment. According to her, injured were accompanied by her mother Shantaben. It is also stated by her that her statement as well as statements of Vinod and her husband etc. were also recorded by Mamlatdar. It is maintained by the witness that after the appellant had come home, he had started abusing deceased Dinaben and though deceased Dinaben had asked the appellant to take meal peacefully and not to utter abuses because guests were present in the house, the appellant had refused to accede to the said suggestion. According to her, after pouring kerosene over the deceased and injured, the appellant had run away.

In her cross-examination, it is stated by her that she was not knowing as to who was residing in the house situated on left side of house of the appellant. According to her, before the incident, she was visiting the house of the appellant and was, therefore, knowing Jashvantrai, who was residing near the house of the appellant. In cross-examination it is further maintained by the witness that over and above Jashvantrai, others had also come to the rescue of those who were on fire, but she was not knowing their names, except that of Jashvantrai. It is mentioned by this witness in her cross-examination that others who had come to the rescue of injured had not received burn injuries. In cross-examination, it is maintained by this witness that she was sitting quite near the deceased and, therefore, the appellant had poured kerosene over her and her sister, as a result of which immediately fire had taken

place because there was a lighted primus. It is explained by the witness in her cross-examination that as some kerosene had spilled over on the floor, fire had also spread in the room. According to her, kerosene had fallen over her whole body. After mentioning that she is illiterate, it was mentioned by the witness in her cross-examination that her clothes were seized by the police. According to her, Jashvantrai and other neighbours had saved her, but Jashvantrai had received serious burn injuries. The cross-examiner had tried to know from her as to whether primus was destroyed in fire or not, but she had pleaded ignorance about the said fact. She has admitted that she had not mentioned in her police statement that the appellant had poured kerosene over her and her sister Dinaben at a time; whereas rest of the kerosene had spilled over the floor of the room, as a result of which all were burnt. The suggestion made by the defence that the appellant had not poured kerosene over her was emphatically denied by her. It is admitted by her that she had not stated in her police statement that after setting occupants of the room on fire, the appellant had run away. According to her, the appellant had run away after setting fire and had, therefore, not received burn injuries. The suggestion made by the defence that the appellant had not uttered abuses after coming to his house was also emphatically denied by him. During the course of her cross-examination it was informed by this witness that Dinaben had five children and that on the date of recording her deposition before the Court, they were staying with father-in-law and mother-in-law of Dinaben.

The reassessment of evidence of this witness also shows that as such she had no dispute with the appellant at all. The appellant was husband of her real sister and, therefore, this witness had no reason to depose falsely against the appellant. It may be noted that in the incident she herself had received injuries, as she was sitting quite near the deceased on the floor. Her claim that the appellant had poured kerosene over her deceased sister as well as over her gets ample corroboration from the reliable testimony of her mother as well as her husband. Further, she is also corroborated by the medical evidence on record. Though certain contradictions have been brought on record with reference to her police statement, this Court is of the opinion that they are minor in nature and are of no consequences. The reliable testimony of this witness also establishes that the appellant had poured kerosene over the deceased and also over her and that she herself, her husband and the deceased had received injuries

because fire had taken place, as there was a lighted stove in the room. When a person pours kerosene over another sitting near a lighted stove, there is no manner of doubt that it would be an attempt to kill. Further, the deceased had lost her life. Under the circumstances, commission of offences punishable under Sections 302 & 307 I.P.C. stands proved from the reliable testimony of this witness also.

12. The conjoint and meaningful reading of evidence of three witnesses establishes beyond doubt that on December 8, 1994, the appellant had poured kerosene over the deceased and witness Dahiben, and caused death of deceased Dinaben as well as attempted to kill Dahiben, who was real sister of Dinaben. Thus, the finding recorded by the learned Judge that the appellant is guilty of having committed offences punishable under Sections 302 & 307 I.P.C. cannot be regarded as erroneous and deserves to be upheld.

13. At this stage, it would be relevant to notice that the appellant is also convicted of the offence punishable under Section 307 I.P.C. for attempting to commit murder of witness Somabhai. The evidence on record does not show that the appellant had poured kerosene over Somabhai. Somabhai had received burn injuries because fire had spread in the room. The evidence would show that he had received burn injuries in an attempt to save deceased Dinaben and his wife Dahiben. Therefore, this Court is of the opinion that the learned Judge of the trial Court was not justified in convicting the appellant of the offence punishable under Section 307 I.P.C. on the ground that he had attempted to kill Somabhai. The said finding is liable to be set aside and is hereby set aside though it is clarified that the appellant is rightly convicted of the offence punishable under Section 307 I.P.C. because he had attempted to kill Dahiben.

14. This brings the Court to consider the question of evidentiary value of four dying declarations produced by the prosecution on record. It may be stated that dying declaration of Jashvantrai Ishwarbhai was recorded by the Executive Magistrate Mr.J.S.Parmar. Mr.J.S.Parmar had also recorded dying declaration of injured Vinod Jayantilal. After lodging of complaint by Shantaben, investigating officer had visited the hospital and recorded police statements of deceased Jashvantrai and Vinod Jayantilal, which will have to be treated as dying declarations in view of the provisions of Section 162(2) of the Code of Criminal Procedure, 1973. In their dying

declarations, the deceased have not stated that the appellant had poured kerosene over them and had set them on fire. The deceased have specifically stated in their dying declarations that they had received burn injuries when an attempt was made to save deceased Dinaben. However, while narrating the cause of their own death, the deceased had also made statements in regard to the death of Dinaben. The learned counsel of the appellant maintained that the statement in a dying declaration of one dead person in regard to the death of another is not a relevant fact with respect to the question about the death of the latter and so, would not be admissible in evidence with respect to offence of murder of deceased Dinaben; whereas the learned A.P.P. has argued that as the statement was made in continuum of a narration describing the final occurrence concerning the declarant and is directly concerned with an event which took place in the presence, sight or hearing of the declarant and the event has proximate relation to the actual final occurrence and the declaration would become unintelligible or distorted if the version of that event is bottled out from the declaration, the statement in the dying declarations of the deceased in regard to death of Dinaben is a relevant fact and is admissible in evidence with respect to the offence of murder of Dinaben also.

15. Having considered the rival submissions, this Court is of the opinion that the dying declaration is the statement made by a person as to the cause of his death or as to any of the circumstances, of the transaction which resulted in his death and such details which fall outside the ambit of this, are not strictly within the permissible limits laid down by Section 32(1) of the Evidence Act. However, there is no manner of doubt that details which are absolutely necessary to make a statement coherent or complete can be included in the statement. The question whether the statement of one dying person can be a relevant fact with respect to the death of another is considered by Division Bench of Bombay High Court in Kashinath Tukaram Jadhav v. State of Maharashtra, 1984 Criminal Law Journal 1447. Therein, the relevant part of dying declaration of the deceased declarant was as under :

"On Sunday, the 30th July, 1978 at about 1.00 p.m. myself and Shri Khanna were standing near the flour mill, in Tagore Nagar, Group No.7. One Kashya Jadhav came there and called us. He asked whether we were searching him for assaulting. Immediately thereafter, he took out one open knife and stabbed Khanna on his chest twice.

When I tried to save Khanna, Kashya stabbed me on my chest."

The Division Bench, after examining law on the point, has held that the question whether the statement of one dying person can be a relevant fact with respect to the death of another will depend upon - (a) whether it was made in the continuum of a narration describing the final occurrence concerning the declarant, and (b) whether it is directly concerned with an event which took place in the presence, sight or hearing of the declarant, and (c) whether that event has some proximate relation to the actual final occurrence, and (d) whether the declaration would become unintelligible or distorted if the narration of that event is bottled out from the declaration. On examination of the facts proved by the prosecution, it was noticed by the Bombay High Court that right from the moment Kashya arrived at the crossing of the roads where Nana and Khanna were standing till the stabbing of Nana formed an unbroken chain of event constituting one transaction and hence, the narration of Nana regarding the manner in which Kashya stabbed Khanna would also fall within the meaning of the phrase "any of the circumstances of the transaction" contained in sub-section (1) of Section 32 of the Evidence Act.

16. Applying the principles laid down by the Bombay High Court to the facts of this case, this Court finds that both Jashvantrai Ishwarbhai and Vinod Jayantilal, who was son of the appellant and deceased Dinaben, had received burn injuries in an attempt to save deceased Dinaben. While narrating the cause of their death, it was essential for them to state as to why deceased Dinaben had received injuries. If the statement made by the deceased in regard to death of Dinaben is separated, then declarations made by them would become unintelligible and distorted. The statement in the dying declaration of the deceased in regard to death of Dinaben was made in continuum of a narration describing the final occurrence concerning the declarant. It was directly concerned with an event which took place in the presence, sight and hearing of the declarants and that event had proximate relation to the actual final occurrence. In order to make statement coherent and complete, it was necessary for the declarants to make a statement in regard to death of deceased Dinaben. Under the circumstances, the statement made by the declarants in regard to the death of the deceased cannot be held to be inadmissible under Section 32 of the Evidence Act will have to be considered by the Court while determining guilt or otherwise of the appellant.

17. On consideration of four dying declarations produced by the prosecution on record of the case, Vinod, who was son of the appellant and present in the room when the appellant had poured kerosene over his wife and set her ablaze, has stated in his dying declaration recorded by the Executive Magistrate that the appellant had poured kerosene over his mother and set her on fire, as there was a lighted stove quite near her. He has maintained this fact in his police statement recorded by P.I. Mr.G.H.Patel, which is produced at Exh.44 on the record of the case. Similarly, Jashvantrai Ishwarbhai in his statement before P.I. Mr.G.H.Patel has mentioned that the appellant had poured kerosene over the deceased and set her ablaze, as a result of which the deceased had received burn injuries and in an attempt to save her, he himself had received burn injuries. Therefore, over and above the eye witness account of the incident as unfolded by three important witnesses, dying declarations on record also establish that the appellant had caused death of deceased Dinaben by pouring kerosene over her and setting her ablaze with the help of lighted stove. The plea that there was no certificate by the Medical Officer to the effect that the deceased were conscious and in a fit state of mind when their statements were recorded and, therefore, the dying declarations should be discarded, has no substance. As observed earlier, one of the important tests of reliability of dying declaration is satisfaction of the person recording dying declaration that he is recording statement of a person who is conscious and in a fit state of mind. The testimony of Executive Magistrate Mr.J.S.Parmar recorded at Exh.14 as well as that of P.I. Mr.G.H.Patel recorded at Exh.42 establishes beyond reasonable doubt that both of them were satisfied that they were recording dying declarations of Jashvantrai and Vinod, who were conscious and were in a fit state of mind to give replies. In fact, testimony of Executive Magistrate Mr.Parmar would show that he had not recorded dying declaration of deceased Dinaben as she was unconscious. Thus, no attempt was made by him or any one to create false evidence. The medical papers of deceased Jashvantrai and deceased Vinod have been produced on record at Exh.40 & 41 respectively. They do not show that in the early morning of December 9, 1994 any of them had become unconscious. Therefore, the claim made by the Executive Magistrate and the investigating officer that they had recorded statements of Jashvantrai and Vinod, who were conscious as well as in a fit state of mind, deserves acceptance. The Five Judge Constitution Bench judgment of the Supreme Court in Laxman v. State of Maharashtra,

(2002)6 SCC 710, has authoritatively laid down that mere absence of doctor's certification as to the fitness of the declarant's state of mind would not ipso facto render the dying declaration unacceptable. After emphasising that it is the duty of the Court to decide fitness of state of declarant's mind, the Supreme Court has held that the same can be decided on the basis of evidence of witnesses who had recorded dying declarations and mere absence of certification from Doctor as to the fitness of declarant's state of mind, is of no consequence. In view of specific evidence of Executive Magistrate Mr.Parmar and that of investigating officer Mr.Patel indicating that both Jashvantrai and Vinod were conscious as well as in fit state of mind when their statements were recorded, this Court is of the opinion that absence of certification from Doctor relating to state of mind of deceased Jashvantrai and deceased Vinod is of no consequence and does not affect the evidentiary value of those statements.

18. As far as conviction of the appellant under Section 304 Part-II I.P.C. is concerned, this Court finds that the appellant could have never imagined that either his son Vinod or for that matter his neighbour Jashvantrai would try to put out fire on his wife and that they would also receive burn injuries. No evidence is adduced by the prosecution to establish that it was also the intention of the appellant to cause burn injuries to deceased Vinod and deceased Jashvantrai because the appellant was knowing in advance that as soon as his wife would be set on fire, deceased Vinod and deceased Jashvantrai would try to extinguish fire on her and would receive burn injuries. What distinguishes culpable homicidal murder is a special mens rea, which consists of four mental attitudes stated in Section 300. Unless the offence can be said to involve at least one such mental attitude, it cannot be murder. The first stage of inquiry into an alleged offence of culpable homicidal is to see whether the accused has done an act by doing which he has caused death of another person. Before an act of the accused can be said to have caused death, it is necessary to show, (a) that there is a direct and distinct connection between the act and the death, and (b) that the connection is not too remote. Whether there is a direct connection between the act and the death, it must largely depend upon the facts and circumstances of a particular case. The connection between the primary cause and the death should not be too remote. Having regard to the facts of the case, this Court is of the opinion that there is no direct or distinct connection between act of the appellant in

setting her wife on fire and the death of the two persons who had attempted to save her. The connection is too remote. Therefore, it is difficult to conclude that the appellant had done an act by doing which he had caused death of deceased Jashvantrai and deceased Vinod. On the facts and in the circumstances of the case, this Court is of the firm opinion that the learned Judge was not justified in convicting the appellant of the offence punishable under Section 304 Part-II I.P.C. for causing homicidal deaths of deceased Jashvantrai and deceased Vinod not amounting to murder. The said conviction is, therefore, liable to be set aside.

19. As noticed in earlier part of this judgment, the defence of the appellant in his further statement under Section 313 of the Code was that he was not present in his house when the incident had taken place. Thus, alibi was pleaded by the appellant. It is well settled that when an accused pleads alibi, the burden is on him to prove it. The plea of alibi postulates the physical impossibility of the presence of the accused at the scene of offence by reason of his presence at another place. The plea can, therefore, succeed only if it is shown that the accused was so far away at the relevant time that he could not be present at the place where the crime was committed. The reliable testimony of three eye witnesses two of whom are injured, establishes the presence of the appellant at the scene of offence. No attempt worth the name was made by the appellant to probablise his plea of alibi. Thus, plea of alibi is of no assistance to the appellant.

The net result of above discussion is that the conviction of the appellant under Section 302 I.P.C. for causing murder of his wife Dinaben and under SEction 307 I.P.C. for attempt to commit murder of Dahiben, who was his sister-in-law, deserves to be upheld; whereas conviction of the appellant under Section 307 I.P.C. for attempt to commit murder of Somabhai Khemabhai and under Section 304 Part-II I.P.C. for committing culpable homicide not amounting to murder of Jashvantrai and Vinod is liable to be to set aside.

For the foregoing reasons,the appeal is partly allowed. Judgment dated August 27, 1996 rendered by the learned Additional Sessions Judge, Ahmedabad City, in Sessions Case No.96 of 1995 convicting the appellant of the offences punishable under Section 302 IPC for causing murder of his wife Dinaben and under Section 307 IPC for attempt to murder Dahiben as well as sentencing him to suffer R.I. for life and fine of Rs.2000/-, in default,

R.I. for six months for commission of offence punishable under Section 302 I.P.C. and R.I. for five years for commission of offence punishable under Section 307 I.P.C. is hereby confirmed. The conviction of the appellant under Section 307 IPC for attempt to murder Somabhai Khemabhai is hereby set aside. So also, the conviction of the appellant under Section 304 Part-II I.P.C. recorded by above-quoted judgment as well as punishment of R.I. for seven years imposed on the appellant for commission of culpable homicide not amounting to murder of deceased Jashvantrai and deceased Vinod is hereby set aside. Direction given by the learned Judge that substantive sentences shall run concurrently is not disturbed. Muddamal to be disposed of in terms of directions given by the learned Judge in the impugned judgment.

(J.M.Panchal,J.) (J.R.Vora,J.)

(patel)